

SIGNATURE David Wick

**VOLUNTARY CLEANUP CONTRACT
18-6063-RP**

**IN THE MATTER OF
CONVERSE MILL SITE, SPARTANBURG COUNTY
and
RE-IMAGINE CONVERSE Mill, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Re-Imagine Converse Mill, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the Converse Mill Site ("Site"). The Converse Mill property is located at 200 High Street, Converse, South Carolina ("Property"). The Property includes approximately 10.88 acres and is bounded generally by High Street on the north; Highway 29 on the south; Oakland Street on the west; and the Pacolet River on the east. The Property is identified by the County of Spartanburg as Tax Map Serial Number 3-13-00-309.00. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to CERCLA, the HWMA, and in regulations promulgated under these statutes.

A. "RICM" shall mean Re-Imagine Converse Mill, LLC. Re-Imagine Converse Mill, LLC is a South Carolina Limited Liability Company with its principal place of business located at 200 High Street, Converse, SC.

B. "Contamination" shall mean impact by a Contaminant or Hazardous Substance.

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- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- F. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- G. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of Re-Imagine Converse Mill, LLC.
- H. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.

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- I. "Site" shall mean all areas where a Hazardous Substance, Pollutant or Contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.
- J. "Voluntary Cleanup" shall mean a Response Action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 to 760, as amended.
- K. "Work Plan" shall mean the plan for additional Response Actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. The Property was used as a cotton mill. Originally constructed in 1896 as Clifton Mill No. 3, Converse Mill contributed to the Clifton Manufacturing Company. Clifton No. 3 was one of the largest mills in the United States with 34,944 spindles and 1,092 looms by the year 1900. Completely destroyed in June of 1903 by a flash flood, Converse Mill was rebuilt by late 1903 as a five-story mill complex. Originally designed by Lockwood, Greene, and Company, the mill comprises approximately 204,500 square feet over four floors sitting on a partial brick basement. In 1965, the Clifton Manufacturing Company was sold to Dan River Mills, a large textile firm based out of Virginia.
- B. Dan River Mills shut down three mills, including Converse Mill, between 1968 and 1973. Converse Mill was used as a warehouse for many years while Clifton No. 2 was still operated in limited

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capacity by Tuscarora Yarns until the 1990s. Clifton No. 1, also used as storage after it ceased operation, was demolished in 2002. Clifton No. 2 was demolished in 2013. The only remaining vestige of the vast Clifton Manufacturing Company is Converse Mill.

C. Independent Consulting Group, Inc. ("ICG") was retained to perform a HUD Phase I Environmental Site Assessment Report for the Property. The *HUD Phase I Environmental Site Assessment ("ESA") Report of Converse Mill*, dated October 26, 2017, indicated, in part, the following:

- i. The Property was used as a Cotton Mill which included weaving, cotton warehouses, and machine shop. Due to the nature of these types of manufacturing operations the prior uses would be considered a Recognized Environmental Condition (REC).
- ii. The Property historically has underground storage tanks (UST), above ground storage tanks (AST), 55-gallon drums of hazardous materials, transformers and fill pipes.
- iii. Numerous 55-gallon drums or containers of petroleum and unknown contents were observed throughout the building interiors. Minor staining was observed adjacent to the 55-gallon drums. Due to the nature of these types of contaminants, unknown contents and staining the drums would be considered a REC.
- iv. A Phase I Environmental Site Assessment prepared by Green Earth Partners Corp. dated April 25, 2013 was made available to ICG. The report concludes: Based upon the findings of this assessment, there are RECs associated with the site in the form of 1) asbestos containing materials documented in an Associated Environmental, Inc. report dated August 14, 2008, 2) a 16,000-gallon underground fuel oil tank (virtually empty),

and 3) suspect PCB containing electrical transformers (suspect due to age & appearance).

- v. ARM Environmental Services, Inc. prepared a Site Characterization Report dated February 21, 2018. The Report documented field activities conducted in January and February 2018. PCBs were identified in surface soils above Regional Screening Levels adjacent to the electrical substation room.

RESPONSE ACTIONS

3. RICM agree to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Soil Management Plan for the Site that will prevent unacceptable exposure to contaminated soil and prevent the improper disposal of contaminated soils. The Soil Management Plan should address the excavation of the Our-of-service fuel oil UST and the area adjacent to the electrical substation room. The Soil Management Plan shall be implemented upon written approval from the Department. The Soil Management Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and RICM's contact person for matters relating to this Contract. RICM will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Soil Management Plan and will notify RICM in writing of any deficiencies in the Soil Management Plan, and RICM will respond in writing to the Department's comments within thirty (30) days. The Soil Management Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina. Following completion of the Soil Management Plan removal items, the following tasks should be addressed:

- A. Submit to the Department an Assessment Plan for review and written approval to determine the source, nature, and extent of any remaining contamination at the Site. The Department will review the

Assessment Plan and will notify RICM in writing of any deficiencies in the Assessment Plan, and RICM will respond in writing to the Department's comments within thirty (30) days. The Assessment Plan shall be implemented upon written approval from the Department.

- B. Submit to the Department an Assessment Report in accordance with the schedule in the approved Assessment Plan. The Department shall review the report for determination of completion of the Assessment Report and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to RICM, and RICM shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to RICM a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, RICM shall submit a revised report addressing the Department's comments.
- C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing Contamination at the Site.

4. RICM shall prepare and submit under separate cover from the Soil Management Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by RICM.

5. RICM shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take

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duplicates of any samples collected by RICM pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a quarter thereafter, RICM shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence by either party to the other shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, or (C) nationally recognized overnight delivery service company or (D) hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: Greg Cassidy
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
cassidga@dhec.sc.gov

RICM: Re-Imagine Converse Mill, LLC
2242 Crescent Ave.
Charlotte, N.C. 28207

All final work plans and reports shall include two (2) paper copies and one (1) electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract by RICM, the Department will seek public

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participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. RICM will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with §§ 44-56-200 and 44-56-740, RICM shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. Oversight Costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

RICM: Britt Weaver
2242 Crescent Ave
Charlotte, N.C. 28207

All of RICM's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the Past Costs or of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site during normal

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business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). RICM and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If RICM is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by RICM.

RESTRICTIVE COVENANT

11. If hazardous substances in excess of residential standards exist at the Property after RICM has completed the actions required under this Contract, RICM shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of RICM and witnessed, signed, and sealed by a notary public. RICM shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Spartanburg County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require RICM or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. RICM or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. Nothing in this Contract is intended to be or shall be construed as a release or

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covenant not to sue for any claim or cause of action, past or future, that the Department may have against a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor or assign.


13. Subject to the provisions of Paragraph 15, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

14. Subject to the provisions of Paragraph 15, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against RICM for any matters not expressly addressed by and settled through this Contract.

15. Upon successful completion of the terms of this Contract, RICM shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that RICM has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1), will give RICM a Certificate of Completion that provides a covenant not to sue to RICM, their signatories, parents, subsidiaries, successors and assigns for the work done in completing the Response Actions specifically covered in this Contract and completed in accordance with the approved work plans and reports. The covenant not to sue is contingent upon the Department's determination that RICM successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, RICM, their signatories, parents, subsidiaries, successors and assigns agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the



Department's intentional or grossly negligent acts or omissions.

16. RICM and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should RICM elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action addressing Contamination identified in this Contract.

17. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site caused by RICM, their parents, subsidiaries, successors and assigns;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
- F. Change in RICM's or their parents', subsidiaries', successors' and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract;
or
- G. Failure by RICM to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

THIS IS CERTIFIED AS A TRUE
AND CORRECT COPY

SIGNATURE

David Wilkin

18. Upon termination of this Contract, the covenant not to sue will be null and void. Termination of this Contract by RICM or the Department does not end the obligations of RICM to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due

19. The signatories below hereby represent that they are authorized to enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY:



Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

DATE:

5/17/2018


Reviewed by Office of General Counsel

DATE:

5/15/18

RE-IMAGINE CONVERSE MILL, LLC

Signature



DATE:

May 9 2018

Britt L. Weaver, Principal
Printed Name and Title

SIGNATURE David Wilkin

APPENDIX A

Legal Description of the Property

County of Spartanburg

Tax Map Serial Number 3-13-00-309.00

All that tract or parcel of land located at Converse, Spartanburg County, South Carolina, containing 10.88 acres, more or less, and Lot 127 being shown on a plat of survey for Scott MacDonald dated June 10, 2006, prepared by Archie S. Deaton, RLS and recorded in Plat Book 140, at page 39, Register of Deeds for Spartanburg County, South Carolina. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

ALSO, an easement twenty (20) feet wide (10 feet on each side of the line) for the benefit of Tract I as created by deed from Dan River, Inc. to Clarkson Brothers, Inc. recorded August 31, 1979 in Deed Book 46-U at page 601, Register of Deeds for Spartanburg County, South Carolina, for the maintenance, operation, alteration, repairing, removing, changing the size of and/or replacing a sewer line running from the aeration pond located on Parcel I to the Pacolet River. Subject to the terms, provisions and conditions set forth in said instrument.

Together with all other rights necessary for the full enjoyment and use of said sewer lines including, but not limited to, the free and full right of ingress and egress over and across the lands formerly owned by Dan River, Inc., to and from the said right of way and easement, and the right from time to time, to cut and remove all trees, undergrowth and other obstructions within said right of way and easement which may injure, endanger or interfere with the construction, operation, maintenance and repair of said sewer line.